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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 1996

Addendum

ARGENTINA*

[23 September 1996]

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* For the initial report of Argentina, see CAT/C/5/Add.12/Rev.1; for its consideration, see CAT/C/SR.30 and 31 and Official Records of the General Assembly, Forty-fifth session, Supplement No. 44 (A/45/44), paras. 150-174. For the second periodic report, see CAT/C/17/Add.2; for its consideration by the Committee, see CAT/C/SR.122, 123 and 124/Add.2 and Official Records of the General Assembly, Forty-eighth session, Supplement No. 44 (A/48/44), paras. 88-115.

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Article 2

1. Without prejudice to the information provided in the core document for the Argentine Republic (HRI/CORE/1/Add.74), it should be noted in this report that article 75, paragraph 22, of the new Constitution in force since 24 August 1994 stipulates:

> " ... treaties and agreements take precedence over laws.
>
> Insofar as they are valid, the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, the American Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol thereto, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child have constitutional rank, do not abrogate any article of the first part of this Constitution, and shall be interpreted as complementary to the rights and guarantees recognized thereby. They may be denounced, if necessary, only by the Executive, following approval by two thirds of the members of each Chamber.
>
> After being approved by Congress, other treaties and conventions on human rights shall require the vote of two thirds of the members of each Chamber in order to acquire constitutional rank."

2. It is clear from the foregoing that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has constitutional rank in Argentina. This means that its contents are on a par with the constitutional provisions even if the source of the provision is different.

3. During the period under review Argentina contributed to the adoption of the Inter-American Convention on Forced Disappearance of Persons, at Belém do Pará on 9 June 1994, in the context of the twenty-fourth General Assembly of the Organization of American States (OAS). The Convention was approved by Act No. 24,556 and the respective instrument of ratification was deposited with the OAS secretariat on 28 February 1996. The Convention entered into force on 28 March 1996.

4. The purpose of the Convention is to prevent, punish and eliminate the forced disappearance of persons, which is considered to be "the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees" (art. II).

5. To that end, the States parties undertake not to practise, permit or tolerate the forced disappearance of persons, even in states of emergency (art. I (a)), which cannot be used to justify the forced disappearance of persons but during which, on the contrary, judicial guarantees shall remain in force, the parties undertaking to ensure that the competent judicial authorities shall have free and immediate access to all detention centres and to each of their units, and to all places where there is reason to believe the disappeared person might be found, including places that are subject to military jurisdiction (art. X). As a general guarantee, the parties undertake to ensure that every person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, and to establish and maintain official up-to-date registers of their detainees (art. XI) (our underlining).

6. The parties also accept the obligation to punish within their jurisdictions those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories (art. I (b)). To that end they agree to define the forced disappearance of persons as an offence deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined, and to impose an appropriate punishment commensurate with its extreme gravity, without prejudice to the establishment of mitigating circumstances for persons who have participated in acts constituting forced disappearance when they help to cause the victim to reappear alive or provide information that sheds light on the forced disappearance of a person (art. III). Similarly, the Convention stipulates that criminal prosecution and the penalty imposed shall not be subject to statutes of limitations or, if this is not possible, that the period of limitation shall be equal to that which applies to the gravest crime in the domestic laws of the corresponding State party (art. VII). For the purpose of determining criminal responsibility, the defence of due obedience to superior orders or instructions shall not be admitted, as persons receiving such orders are legally bound not to obey them (art. VIII), and cases shall be tried by the ordinary courts, to the exclusion of all other special courts, particularly military courts (art. IX).

7. The States parties pledge to cooperate with one another in helping to prevent, punish and eliminate the forced disappearance of persons (art. I (c)). Consequently, each State party must take measures to establish its jurisdiction over acts constituting the forced disappearance of persons when such acts have been committed within its jurisdiction, when the accused is a national of that State and when the victim is a national of that State and that State sees fit to do so (art. IV). Forced disappearance shall be considered to be an ordinary offence for purposes of extradition, the Convention being the necessary legal basis therefor (art. V); when a State party does not grant the extradition, the case shall be submitted to its authorities (art. VI).

8. Such cooperation includes the search for, and identification, location and return of, minors who have been removed to another State or detained therein as a consequence of the forced disappearance of their parents or guardians.

9. The protection mechanism established by the Convention is the system of petitions for the parties to the American Convention on Human Rights, although urgent and confidential reports may be requested if necessary.

10. Argentina was a determined sponsor of the Convention. In fact, when the National Constitution was amended, resulting in the text that has been in force since 24 August 1994, the forced disappearance of persons was introduced as an offence giving rise to habeas corpus proceedings, and was therefore established as a constitutional rather than legislative provision.

11. Another instrument adopted in the Latin American context, also by OAS, was the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. Article 2 of this instrument stipulates: "Violence against women shall be understood to include physical, sexual and psychological violence: (a) that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse; (b) that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and (c) that is perpetrated or condoned by the State or its agents regardless of where it occurs" (our underlining). One of the rights protected in chapter II, article 4, is a woman's right not to be subjected to torture. The Convention was approved by Argentina under Act No. 24,632. On 5 July 1996, Argentina deposited its instrument of ratification with the secretariat of OAS.

Article 3

12. The extraditions granted by Argentina have been effected according to the procedures established, and with the guarantees required in article 3 of the Convention.

13. The extradition treaty between Argentina and the Republic of Korea - currently being reviewed by the legislature pending approval - contains specific clauses enabling the requested State to refuse the extradition request when: "the person whose extradition is being requested has not been and will not be given the minimum guarantees in criminal proceedings in the requesting State, in conformity with the provisions of article 14 of the International Covenant on Civil and Political Rights" (art. 3.II (e)).

14. During the period under review a German national charged with involvement in crimes against humanity during the Second World War has been extradited. This information is included because the offences for which extradition was requested are considered to constitute torture in accordance with the second part of the definition contained in article 1 of the Convention, which includes any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... for any reason and based on discrimination of any kind. Acts corresponding to the offence of genocide may be presumed to cause the victims severe suffering within the meaning of the above-mentioned definition.

Article 4

15. Although there have been no changes in the substantive provisions of the Argentine Penal Code during the period covered by this report, accusations of torture, ill-treatment and unlawful coercion have had a better reception.

16. If it is impossible to punish the official responsible in a criminal court because no provision is made for the offence in question, the administrative procedure can be used to determine whether the official in question was responsible for failure to perform his duties. The preliminary investigation can result in the official's exemption from responsibility or the imposition of penalties (transfer, suspension, dismissal, exoneration).

17. As an illustration of the effectiveness of administrative action in the Oviedo Luis Roque et al concerning ill-treatment case, which occurred in the Province of Chaco, administrative proceedings were instituted along with judicial proceedings and led to the conviction - by orders issued in December 1995 - and dismissal of the police officers involved in the incident in question.

Article 5

18. There have been no changes in the exercise of jurisdiction by the judiciary over the offences referred to in article 4 of the Convention since the preceding reports. These provisions are also contained in the Code of Criminal Procedure, which has been in force since 5 September 1992.

Article 6

19. The information provided on article 3 is also applicable to this article. It should be noted, however, that in cases where extradition from Argentina has been requested, it has been carried out in conformity with the guarantees of due process, all cases ultimately being decided by the Supreme Court of Justice.

20. In cases where Argentina has jurisdiction, proceedings have been conducted in accordance with the procedural legislation in force and the provisions of the Convention.

Article 7

21. Argentina applies the principle aut daedere aut punire, as laid down in the international agreements that are binding on it. In cases where no agreement exists, the principle applies to nationals, and also in respect of acts having consequences within its territory.

22. The treaty of extradition between Argentina and the Republic of Korea contains a clause which stipulates: "If the requested State does not agree to the extradition of a national because of his nationality, it shall - on application of the requesting State - submit the matter to the competent authorities in order that judicial proceedings may be brought against that person. To this end, any documents, information or evidence concerning the

offence may be sent free of charge by the means provided for in article 6, paragraph 1. The requesting State party shall be informed of the result of its application".

Article 8

23. Argentina recognizes torture as an extraditable offence, provided that guarantees of due process for the accused and the requirements for extradition are met.

24. The extradition treaty with the Republic of Korea, mentioned in the commentary on the preceding articles, clearly stipulates that exceptions to extradition shall in no circumstances include "an offence in respect of which the Contracting Parties are under the obligation to establish jurisdiction or surrender the individual in question under a multilateral international agreement to which both are parties" (art. 3 (1) (d)). It should be noted that the Republic of Korea deposited its instrument of accession to the Convention on 9 January 1995 and that the obligation to extradite persists under the obligations deriving from the Convention, even though the treaty in question is not yet in force.

25. Reference is made to the 30 August 1989 judgement of the Third Division of the La Plata Federal Court of Appeal granting the extradition of Josef Franz Leo Schwammberger to the Republic of Germany, which stated:

> "The extradition procedure does not constitute an actual trial to determine the innocence or guilt of the person whose extradition is being sought, but is simply aimed at reconciling the requirements of the administration of criminal justice in civilized countries with the rights of the person who has been granted asylum."

26. The trial of Erich Priebke is current taking place in Italy. In the recital to the 2 November 1995 judgement giving rise to the extradition, the Supreme Court of Justice stated "that the fact of having killed 75 Jews who were neither prisoners of war nor acquitted or convicted defendants, nor detained at the German police headquarters, from among the 335 who died in the particular circumstances of this case, constitutes a prima facie case of genocide. This is without prejudice to other characterizations of the act subsumed under that of genocide". It went on to say "that the characterization of an act as a crime against humanity is not contingent on the will of the requesting or requested State in the extradition process but on the ius cogens principles of international law".

27. In connection with article 8, paragraph 4, reference is made to the 20 March 1990 judgement of the Supreme Court of Justice in the above-mentioned Schwammberger case. The defence had argued that since the events had taken place in the territory of the present Republic of Poland, the applicable legislation was that of Argentina which stipulates that when the extradition of a foreigner is requested for offences committed outside the territory of the requesting State, extradition shall be granted only in cases where Argentine legislation permits the prosecution of offences committed outside Argentine territory. The Court found that "from the point of view that concerns us, the Federal Republic of Germany is the sovereign successor

of the sovereign German Reich, notwithstanding its dismemberment and the fact that it has been subject to the territorial authority of two States recognized as sovereign by the international community, namely the Federal Republic of Germany and the German Democratic Republic. This fact might lead to both German States claiming the right to prosecute offences that were originally within the jurisdiction of the German Reich, but may in no way be used as a basis for denying both States this authority".

Article 9

28. The treaties of extradition and judicial assistance in criminal matters referred to in the preceding reports are still valid in Argentina. No new treaties have been concluded during the period under review; as stated earlier, the extradition treaty with the Republic of Korea is under consideration by the legislature.

Article 10

29. The National Directorate for Development within the Office of the Under-Secretary for Human and Social Rights (Ministry of the Interior) has specific functions in the field of information, for which purpose it has set itself the following objectives: (a) to promote the inclusion of education on human rights and democracy at all levels of the formal educational system, as support for civic ethics, to guarantee human rights and to prevent violations; (b) to carry out informal human rights education programmes jointly with governmental, non-governmental and international organizations; (c) to train public officials (employees of national and provincial public administrations) in the theoretical and practical aspects of human rights, given that they have operational responsibility for the implementation of public policies; (d) to train police officers and security forces to carry out their work with due respect for the rules and principles laid down by the laws in force and in accordance with the recommendations of the United Nations; (e) to encourage the work of the human rights documentation centre administered by the Directorate and (f) to promote publications that support the dissemination, theoretical study and teaching of human rights.

30. Similarly, as part of an effort to educate and inform the public, the Institute for the Promotion of Human Rights, the Government Procurator for the Prison System, both chambers of the Congress of the Nation and the Office of the Under-Secretary for Human and Social Rights (Ministry of the Interior) organized the first symposium on the prison system and human rights in Buenos Aires from 13 to 15 April 1993.

31. The 1995 activities of the National Directorate for Development (Office of the Under-Secretary for Human and Social Rights) included two training courses for police officers, one for the training of trainers and the other for the members of the federal and provincial police forces, with the support of the United Nations Centre for Human Rights.

32. The Publication Division of the Office of the Under-Secretary has been engaged in distributing the text of the Declaration on the Protection of All Persons from Enforced Disappearance (General Assembly resolution 47/133) to

government agencies and explaining its contents and scope at the many seminars it holds for prison, police and security forces personnel and members of the judiciary, among others.

Article 11

33. The judicial guarantees of due process are laid down in the new Code of Criminal Procedure, which has been in force since 5 November 1992.

34. The substantial changes which the new Code has made in the procedural rules are aimed at safeguarding the physical integrity of prisoners and detainees. To this end, it reduces the possibilities for keeping a person in detention and considerably limits the cases in which a person deprived of liberty may be held incommunicado. The Code provides a clear framework for restrictions on personal liberty by establishing two rules, which form the basis for such restrictions and are therefore residual rules.

35. Article 2 stipulates: "Any legal provision which limits personal liberty or the exercise of a right granted by this Code or which establishes procedural penalties shall be interpreted restrictively. Criminal laws may not be applied by analogy.

36. Article 280, in the section relating to the situation of the accused, states: "In accordance with the provisions of this Code, personal liberty may be restricted only to the extent absolutely essential to ensure that the truth is revealed and the law implemented. Arrests and detentions shall take place with the least possible harm to the person and reputation of the individuals concerned, and with an order drawn up for them to sign, if they are capable, informing them of the reason for the procedure, the place to which they are to be taken and the judge who is to preside".

37. With reference to the time limit within which detainees must be brought before a judicial authority, Argentine procedural legislation limits the power of police officers and assistants to arrest persons without a court order to the following expressly stipulated cases: (a) anyone who attempts to commit a prosecutable offence, at the time when he is preparing to do so; (b) anyone who escapes while lawfully detained; (c) anyone who is surprised in flagrante delicto while committing an offence; and (d) exceptionally, anyone against whom there is strong evidence of guilt, in the event of imminent danger of flight or serious delay in the investigation, for the sole purpose of immediately bringing the person before the court. In these cases the detainee must be brought before the court within six hours.

38. In accordance with article 205 of the Code of Criminal Procedure, the judge may order the detainee to be held incommunicado for a period of not more than 48 hours, which may be extended for a further 24 hours by a substantiated order when there is reason to fear that the detainee may plot with third parties or impede the investigation in some other way. When the police have exercised the power to apprehend an alleged perpetrator and have ordered him to be held incommunicado for a maximum period of six hours, subject to a physical and psychological examination, the period of incommunicado detention may only be extended on the order of the judge to a maximum of 72 hours.

39. In no circumstances shall the fact that the detainee is being held incommunicado prevent him from communicating with his defence counsel immediately before making his statement or before any proceeding requiring his personal participation.

40. A person held incommunicado shall be permitted the use of books or any other objects he may request, provided that such objects cannot be used to evade incommunicado detention or endanger his own life or that of another person. He shall also be authorized to conclude civil acts which cannot be postponed, provided that such acts do not diminish his solvency or jeopardize the purposes of the investigation.

41. As regard the right of detainee or his counsel to institute proceedings, at any time, before a judicial or other authority in order to challenge the legality of his detention, article 43 of the Constitution in force since 24 August 1994 stipulates that "When the right which has been infringed, restricted, jeopardized or threatened concerns physical liberty, in the event of the illegal worsening of the form or conditions of detention or the enforced disappearance of persons, an application for habeas corpus may be filed by the affected party or any person acting on his behalf and the judge shall hand down a decision immediately, even if a state of siege is in force".

42. This provision, which introduces enforced disappearance of persons into the Constitution, gives constitutional status to the habeas corpus procedure already in force in Argentina and regulated by Act No. 23,098, whose text is to be brought into line with the new concept introduced.

43. At any stage of the proceedings and until such time as pre-trial detention is ordered by a competent judicial authority, an individual accused of committing an offence may, either personally or through a third party, apply for an exemption from detention. In accordance with the provisions of article 316 of the Code of Criminal Procedure, the judge shall determine the act or acts involved, and if the accused is liable to not more than eight years of imprisonment, the judge may exempt him from detention. The judge may also do so if he believes prima facie that there are grounds for a suspended sentence.

44. The order granting or refusing such exemption or release from custody is subject to appeal by the Public Prosecutor's Office, the defence counsel or the accused himself, without suspensive effect, within a period of 24 hours.

45. An appeal against the decision to order pre-trial detention may be lodged with the court that issued the order which must take appropriate action. If the remedy is granted, the decision shall be taken by the appellate court. If it is rejected by the court responsible for hearing it, the appellant may lodge a direct complaint for refusal of leave to appeal.

46. Article 280 of the Code of Criminal Procedure, relating to restrictions on liberty, lays down an obligation for the authorities to ensure that arrests and detentions take place with the least possible harm to the person and

reputation of the individuals concerned, and with an order drawn up for them to sign, informing them of the reason for the procedure, the place to which they are to be taken and the judge who is to preside.

47. Article 197 of the Code of Criminal Procedure stipulates that, at the first opportunity, including during police custody, but in any event before the questioning, the judge shall invite the accused to choose a lawyer; if the accused does not do so or if the lawyer does not immediately accept the case, the judge shall proceed in accordance with article 107 (lawyer appointed by the court or chosen by the accused from among the lawyers registered with the Bar Association). Defence counsel may talk to his client immediately before the client's statement is taken by the police (art. 184, penultimate paragraph, only admissible if the accused gives urgent reasons for wishing to make a statement) or by the examining magistrate; otherwise the proceedings are invalid. If the accused is left at liberty, he shall specify his domicile. If he is held on remand, the person indicated by him shall be informed of the place at which he is being held, and this information shall be made available to relatives and lawyers.

48. When a detainee is released by order of a competent authority, the Government provides certain safeguards in order to ensure that effect has been given to the release order and that the detainee's physical integrity has been respected.

49. For a prisoner to be released, a court order to that effect must be issued to the prison authority. The record of execution of this order, duly signed by the person being released, must be resubmitted to the judge handling the case.

50. In order to verify detainees' physical integrity, medical examinations are conducted when they enter and leave places of detention. In addition to the possibility of lodging an appeal with the judge handling the case against alleged breach of this rule, inmates in the federal prison system may lodge a complaint with the Government Procurator for the Prison System, who is responsible for protecting the human rights of detainees.

51. Article 493, paragraph 1, of the Code of Criminal Procedure states that the enforcement judge shall be competent to ... monitor observance of all constitutional guarantees and international treaties ratified by the Argentine Republic in so far as they concern the treatment given to convicted prisoners, detainees and persons subject to security measures.

52. In order to provide further information on the legislation in force in this area, the relevant provisions are transcribed below.

53. Article 282 of the Code dispenses with the detention of the accused "when the offence being investigated does not carry a custodial sentence or a suspended sentence appears to be appropriate", except in cases of flagrancy. In other cases, "the judge shall issue a detention order for the accused to be brought before him, provided there are grounds for taking the accused's statement" (art. 283).

54. With regard to incommunicado detention, article 205 states:

"The judge may order the detainee to be held incommunicado for a period of not more than 48 hours, which may be extended for a further 24 hours by a substantiated order when there is reason to fear that the detainee may plot with third parties or impede the investigation in some other way.

In cases where the police have exercised the right conferred on them by article 184, paragraph 8, the judge may only extend the period of incommunicado detention to a maximum of 72 hours.

In no circumstances shall the fact that the detainee is being held incommunicado prevent him from communicating with his defence counsel immediately before making his statement or before any proceeding requiring his personal participation.

A person held incommunicado shall be permitted the use of books or any other objects he may request, provided that such objects cannot be used to evade incommunicado detention or endanger his own life or that of another person.

He shall also be authorized to conclude civil acts which cannot be postponed, provided that such acts do not diminish his solvency or jeopardize the purposes of the investigation."

55. The following provisions deal with situations in which the accused may be permitted to remain at liberty - provided that the conduct of the proceedings is not impeded, held in pre-trial detention, exempted from detention or released from custody:

"Art. 300. Before the accused's statement has been completed, or after he has refused to give one, the judge shall inform him of the legal provisions governing conditional release.

...

"Art. 306. The judge shall issue a committal order, within 10 days of the taking of the statement, if there is sufficient evidence to substantiate the existence of an offence and the accused's involvement therein.

...

"Art. 309. When, within the time-limit set in article 306, the judge considers that there is no reason to order the trial or the cessation of proceedings, he shall issue an order to that effect, without prejudice to the continuation of the investigation, and shall order the release of any detainees, after establishing their domicile.

"Art. 310. If an indictment does not include a pre-trial detention order because the conditions listed in article 312 have not been met, the accused shall be left or placed on bail and the judge may order him

not to leave a given place, to avoid a given place or to appear before a given authority at stipulated intervals. If a particular disqualification is applicable to the offence, the judge may also order him to refrain from the activity in question.

"Art. 311. The judge may, on his own initiative, revoke or modify the committal order or the decision not to order a trial during the pre-trial investigation. Only an appeal without suspensive effect may be lodged against these decisions: in the first case, by the accused or the Prosecutor's Office and, in the second, by the latter or the plaintiff.

"Art. 312. The judge shall order the accused to be placed in pre-trial detention when issuing the committal order, unless he confirms a previously-granted conditional release, if

(1) The offence, or series of offences, of which he is accused carries a prison sentence and the judge considers prima facie that the sentence will not be suspended;

(2) Although the offence carries a custodial penalty for which a suspended sentence is permissible, conditional release is not appropriate, under the provisions of article 319.

...

"Art. 316. Anyone who considers himself to be accused of an offence in a particular criminal case may, at any stage of the proceedings and until such time as pre-trial detention is ordered, either personally or through a third party apply to the officiating judge for an exemption from detention."

56. The judge shall determine the act or acts involved, and if the accused is liable to not more than eight years of imprisonment, may exempt him from detention. The judge may also do so if he believes prima facie that there are grounds for a suspended sentence.

"Art. 317. Release from prison may be granted:

(1) In the same circumstances as those applicable to exemption from detention;

(2) If the accused has served, in custody or pre-trial detention, the maximum penalty stipulated in the Penal Code for the offence or offences of which he is accused.

(3) If the accused has served, in custody or pre-trial detention, the penalty requested by the prosecutor, and this appears at first sight to be sufficient.

(4) If the accused has served the penalty imposed by the non-enforceable judgement;

(5) If the accused has served, in custody or pre-trial detention, a period of time which, had he been convicted, would have enabled him to obtain conditional release, provided that the prison regulations have been observed.

...

"Art. 319. Exemption from detention or release from prison may be denied, with due respect for the principle of innocence and article 2 of this Code, if the objective, provisional assessment of the features of the offence, the possibility of recidivism, the personal circumstances of the accused or the fact that he has previously been granted releases provide good reason to believe that he will attempt to escape justice or interfere with the investigations."

57. The new Code of Criminal Procedure provides an effective instrument for verifying, inter alia, respect for the physical integrity of detainees by authorizing judges, if they deem it necessary, to carry out a physical and mental examination of the accused, while ensuring, to the extent possible, respect for the latter's sense of decency. If necessary, such examinations may be carried out with the help of specialists. Only the accused's counsel, or a person whom he trusts and who has been previously notified of the examination, may be present at the examination (art. 218).

58. There are other means of restricting the number of situations which pose a threat to the accused's safety. Thus, the new Code disallows voluntary statements made to the police, following a clear trend in the jurisprudence of the Buenos Aires courts, which have ruled such evidence inadmissible, precisely in order to prevent excesses resulting from use of the accused's statement as evidence. In this regard, article 184 states:

"(Police or security force officers) may not take a statement from the accused. They may only question him to determine his identity, having read out to him the rights and guarantees contained in articles 104, first and last paragraphs, 197, 295, 296 and 298 of this Code, applicable by analogy to the case, subject to the proceedings being declared invalid if this is not done and without prejudice to the judge's communicating this omission to the officers' superior, who will order the appropriate administrative penalty for this serious breach of duty.

"If the accused gives urgent reasons for wishing to make a statement, the police or security force officer shall inform him that he may make an immediate statement before the competent magistrate or, if the latter is for some reason unable to hear his statement within a reasonable time, before any other examining magistrate who may be assigned to do so."

59. The methods in question also include an institution totally new to our legal system, probation - in other words, the conditional suspension of proceedings. It is ordered as part of, or in addition to, a suspended sentence, but always before the trial and in place of sentencing. Thus, article 293 states:

"If criminal law authorizes suspension of the prosecution, the competent judicial body may grant such suspension at a single hearing at which the parties shall have the right to speak. In such cases, the competent judicial body shall, at that same hearing, specify in detail the instructions and conditions to which the accused shall be subject and shall immediately inform the enforcement judge of the decision placing the accused on probation".

60. At the organizational and institutional levels, the new criminal procedure makes provision for an enforcement judge (art. 30), whose competence is defined by article 490 in the following terms:

"Judicial decisions shall be enforce, as appropriate, by the court that issued them or by the enforcement judge, who shall be competent to resolve all matters or incidents that may arise while the decision is being enforced and shall make any notification required by law".

61. Article 493 stipulates that the enforcement judge's specific functions shall include competence to: (a) monitor observance of all constitutional guarantees and international treaties ratified by the Argentine Republic in so far as they concern the treatment given to convicted prisoners, detainees and persons subject to security measures; (b) monitor compliance by the accused with the instructions and requirements laid down in the case of probation; (c) ensure that sentences handed down by the judiciary are actually carried out; (d) resolve any incidental matters that may arise during this period; (e) cooperate in the reintegration into society of persons released on parole.

62. This brief summary demonstrates that the combination of limiting the grounds for imprisonment, and hence the length of deprivation of freedom, reducing the number of situations which pose a threat to the physical safety of accused persons, and the presence of an enforcement judge provide the new criminal procedure with a greater number of guarantees than has been the case until now.

Articles 12 and 13

63. Without prejudice to the relevant legal remedies specifically mentioned in the core document, it should be noted that criminal complaints account for only a small percentage of the total because of the rapidity and appropriateness of the above-mentioned remedy of habeas corpus, which is provided for under existing legislation and was incorporated into the Constitution in the 1994 reform (art. 43) mentioned in earlier paragraphs.

64. Act No. 23,098 provides that habeas corpus may be applied for when an act or omission by a public authority is reported and involves: (a) restriction or threat to freedom of movement, without a written order from a competent authority; or (b) illegal aggravation of the form and conditions of detention, without prejudice to the powers of the trial judge if there is one.

65. Without prejudice to the criminal and correctional courts' competence to receive complaints of violations of the provisions contained in the relevant articles of the Penal Code and to hear habeas corpus applications (see annex I

for information provided by the Office of the Buenos Aires Criminal Court of Appeal), there are specific focal points which receive complaints from individuals who claim to be victims of torture or ill-treatment: (1) the Office of the Under-Secretary for Human and Social Rights (Ministry of the Interior); (2) at the federal level, the Government Procurator for the Prison System, whose specific functions include serving as a focal point for complaints concerning acts falling within his sphere of competence.

66. Decree No. 1598/93 established the Office of the Government Procurator for the Prison System, thereby creating, under the authority of the Executive, a mechanism to monitor respect for the human rights of persons throughout the country in the custody of the federal prison service, both during pre-trial detention and after conviction.

67. The specific functions of the Government Procurator for the Prison System are to investigate complaints and claims lodged by prisoners, their families (up to the fourth degree of blood relationship and third degree by marriage) or anyone able to prove cohabitation with a detainee, concerning acts which prima facie appear to be in violation of their rights. The Government Procurator may also initiate a criminal complaint and refer the case to the Ministry of Justice, which has jurisdiction over the prison system. In this respect, his activities and those of the enforcement judge are complementary.

68. With regard to allegations of ill-treatment, 1,382 complaints were received in 1993-1994 and 1,170 in 1994-1995.

69. Bulacio case: The proceedings against Police Superintendent Espósito, which involve determination of criminal responsibility for the death of a young man, Walter Bulacio, while in the custody of the Federal Police, have been under way since April 1994, when the Supreme Court revoked the Criminal Court's dismissal of proceedings against the officer concerned.

70. Nuñez case: His disappearance and death are under investigation by Judge Ricardo Szelagowski in the city of La Plata. The judge assumed jurisdiction in the case in August 1995 after the Court of Appeal revoked the pre-trial detention order against 7 of the 14 police officers who had been on trial after surrendering to the authorities in March 1994. Ten of the defendants had been accused of illegal arrest, illegal search, torture resulting in death and failure to prevent a victim from being subjected to torture, but the Court decided that eight of the police officers presumed responsible had not been direct participants in the events in question and left them at liberty. Police officers Victor Dos Santos and Eduardo Fraga are currently in detention and the three other defendants in the case, junior police officers Luis Ponce, Pablo Gerez and Alfredo González, have fled.

71. Miguel Brú case: The proceedings initiated following his death in August 1993 while illegally detained at Police Station No. 9 in the city of La Plata are being heard by Judge Ricardo Szelagowsky in Criminal Court No. 7 of that city. The case involves the prosecution of five officers formerly attached to that police station. Sergeant Justo López and Deputy Superintendent Walter Abrigo are in pre-trial detention, having been charged with torture resulting in death. Superintendent Ojeda, Sergeant Eduardo Ramón

Cereceto and Officer Daniel Gorosito have been charged with the offence of concealment, which under the criminal legislation in force does not require the accused to be held in detention. The judge has ordered the judicial investigation phase to be closed and the public trial, for which no date has been set, is pending.

72. Province of Mendoza: On 24 April 1996, the Criminal Court of Appeal in San Rafael sentenced three police officers to two or three years of imprisonment, barred them from public office for four years and ordered compensation to be paid to the victims.

73. Miguel Rodríguez case: In 1995, a police officer was sentenced to eight years' imprisonment after being tried for the death of Miguel Rodríguez. In connection with this case, the Governor of the Province of Córdoba, prior to the handing down of the sentence, ordered the dismissal of the chief of the provincial police and his director of internal security.

74. Sergio Santiago Durán case: A young man died as a result of torture by police officers. In the resulting criminal trial at the Province of Buenos Aires court, the police officer involved was found guilty and sentenced to life imprisonment.

75. Carrasco case: The proceedings are currently before the Court of Criminal Cassation, which is hearing an appeal lodged by counsel for the persons who were convicted by the Federal Criminal Court in Neuquén in February 1996. The sentences for homicide ranged from 10 years' imprisonment (for two of the victim's fellow conscripts) to 15 years (for an army second lieutenant); a non-commissioned officer was convicted of concealment and sentenced to three years' imprisonment.

76. Garrido and Baigorria cases: The Inter-American Commission on Human Rights has received a complaint concerning the disappearance of Adolfo Garrido and Raúl Baigorria, who were arrested in General San Martín park in the city of Mendoza on 28 April 1990. The case, No. 11,009, was referred to the Inter-American Court of Human Rights. After acceding to the request received, the Government held a series of meetings with representatives of the victims' families in order to pave the way for a solution involving the granting of appropriate redress and compensation. In a decision dated 2 February 1996, the Court took note of the Argentine Government's investigation of the events described in the request and also of its recognition of international responsibility for those events, and granted the parties a six-month period in which to arrive at an agreement concerning redress and compensation. This period has not yet expired.

77. Guardatti case: On 23 May 1992, Pablo Christian Guardatti and a group of friends reportedly attended a dance at a school in the La Estanzuela district of Godoy Cruz, Province of Mendoza. According to witnesses, Guardatti got into an argument with the police, who handcuffed him and took him to the local police station, near the jail. He has not been heard of since. On 30 November 1993, a petition was submitted to the Inter-American Commission on Human Rights. On 23 January 1996, by Decree No. 53/96, the

President of the Nation issued instructions that a solution should be sought in the Garrido and Baigorria case and the Guardatti case. Negotiations are under way.

78. Mirabete case: On 20 February 1996, Alejandro Mirabete, aged 17, and a group of friends were drinking beer and chatting at an open-air stall on Vuelta de Obligado Street, between Olazábal and Mendoza, in the Belgrano district of Buenos Aires. A group of police officers from Police Station No. 33 arrived and ordered them to produce identification. For some reason, Mirabete took fright and ran away. One of the police officers fired his gun at him, hitting him in the back of the neck. He died three days later. Case No. 13,758/96, entitled "Miranda, Mario Eduardo, homicide. Victim: Mirabete, Alejandro", originally came before Juvenile Court No. 6, Secretariat No. 17, and concerned the events of 20 February in which the Mirabete boy was injured. At that time the title of the case file was attempted homicide. When Alejandro Mirabete died, the Juvenile Court judge declared herself incompetent in the case and referred the proceedings to Criminal Investigation Court No. 30, Secretariat No. 109, on 4 March 1996. On 5 March, the accused's statement was amended to include a reference to ordinary homicide. The following day, there was a reconstruction of the event under investigation, with the help of experts from the Gendarmería Nacional. On 7 March, an order was issued for the prosecution and pre-trial detention of Officer Miranda; this order was confirmed by the competent Court of Appeal on 22 April. The pre-trial proceedings having been closed, the parties have been given an opportunity to make statements on the merits of those proceedings. The case will then be ready to be heard by the trial court determined by ballot. This information was transmitted punctually to the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions.

79. Rodríguez Laguens case: The proceedings were heard by a criminal court in the Province of Jujuy and resulted in the conviction of police officers Italo Soletta, Juan José Zingarán and Rogelio Moules, of the same province. They were sentenced to 16 years' imprisonment for the abduction and murder of Diego Rodríguez Laguens in February 1994. At the same time, five police officers and a doctor were sentenced to two years' imprisonment for concealment. The court also ordered monetary compensation to be paid to the victim's relatives.

80. Cristián Ariel Campos case: This 16-year-old boy was abducted on 2 March 1996 in Mar del Plata, and his body was found later. An initial examination by experts showed that he had been burned to death. A provincial police sergeant has been charged, and judicial proceedings are under way.

81. Incidents involving university students and police officers: On 20 February 1996, during the National University of La Plata Assembly, the purpose of which was reform of the university statute, there were serious incidents involving students and the Infantry Guard, the Buenos Aires security force, leading to the arrest of many students, all of whom were released within 48 hours. Criminal proceedings were initiated under Judge Guillermo Lombarda of La Plata Criminal Court, who is compiling evidence and paying particular attention to media coverage of the events (videos, photographs) and to the testimony of victims of the aggression, students and journalists.

Pre-trial detention has been ordered for 11 police officers involved in the incidents; they have been charged with violating article 58, paragraph 15, of Act No. 9559/80.

82. Prison riots: As a result of the events which took place between 30 March and 7 April 1996 during the riot in Province of Buenos Aires Prison No. 2, a preliminary administrative investigation has been opened under file No. 2211-64,377/96, entitled "apparent mass attempt to escape with use of firearms, rioting with hostage-taking, abduction, extortion, assault and resisting authority, wounding, homicide, aggravated damage, sedition, and violation of article 55, paragraphs 1, 3, 4, 5, 7 and 9, of Decree-Law No. 5619/50 and article 117 and article 118, paragraphs 4, 5, 6, 8 and 10, of Regulatory Decree No. 1373/62, provided for in article 55 of Decree-Law No. 5619/50". Although the proceedings are currently at the classified investigation and evidential stages, the Province of Buenos Aires Human Rights Department has stated that it is clear from the facts that on the date in question a group of prisoners with firearms led an escape attempt which was thwarted by the prison guards. This sparked off a riot in which many prisoners took part. A group of prisoners took several hostages: seven prison officers of various ranks, the woman judge on duty, the secretary of Criminal and Correctional Court No. 1 of the Judicial Department of Azul, and three Protestant ministers. The record shows that a number of prisoners were injured and seven killed, while others were victims of rape and assault inflicted, according to the inmates themselves and as stated in the proceedings, by their fellow prisoners. The investigation into the events is still under way.

83. Cases in the provinces of Chaco and Corrientes: Mr. Nigel S. Rodley, the Commission on Human Rights Special Rapporteur on the question of torture, requested information from the Government on alleged cases in the provinces of Chaco and Corrientes. This information was transmitted punctually, as stated in the report of the Special Rapporteur of 16 January 1996 (E/CN.4/1996/35/Add.1). In this regard, given that some of the incidents reported occurred in the Province of Chaco, a list of complaints of ill-treatment in this province is appended (see annex II).

84. In addition, by a note of 30 January 1995, the Centre for Human Rights requested the Government to provide information concerning a complaint lodged by inmates in jails under police supervision in the city of Resistencia, Province of Chaco, which was transmitted by Provincial Deputy Jorge Miño. The requested information was submitted by the Government in July 1995 and remains valid.

85. Without prejudice to all the information provided under this article, the Code of Criminal Procedure currently in force includes the guarantees referred to in the second part of the article concerning the protection of complainants and witnesses.

Article 14

86. The aim of a criminal indemnity action for injury to victims of the offence of torture or ill-treatment is to obtain fair and adequate redress in the form of compensation.

87. In the above-mentioned Rodríguez Laguens case, the court decided that the sum of US$ 100,000 constituted fair redress for the victim's relatives.

88. In the trial of three Province of Mendoza police officers, mentioned with reference to article 13 of the Convention, each of the convicted officers was ordered to pay US$ 5,000 in compensation to the victims of the ill-treatment. The provincial government was also held responsible for the actions of its employees and ordered to pay US$ 15,000.

89. In this regard, it is important to bear in mind that the compensation provided for in Act No. 24,043 of 1991 is still being paid to the victims of the most recent military dictatorship (1976-1983) and their relatives. The Argentine State's initiative in compensating torture victims took into account the recommendations made by the Committee against Torture (see CAT/C/3/D/1,2,3/1988) with respect to the communications submitted to it, which also prompted the Committee to urge the Argentine Government, by letters dated 23 November, 20 December and 21 December 1989, to ensure that compensation was paid to torture victims and their dependants under article 14 of the Convention.

90. In addition, on 7 December 1994 Congress adopted Act No. 24,411, which calls for the granting of benefits to the rightful successors of individuals who were in a situation of enforced disappearance when that Act was promulgated and to the successors of those who died as a result of action by the armed forces, the security forces or any paramilitary group prior to 10 December 1983.

91. This Act is part of the Government's progressive redress policy with regard to the events which immediately preceded the restoration of democracy. Various measures were taken in this regard, all of them with government support. These measures include: (i) Act No. 23,466 of 30 October 1986, which grants non-contributory pensions to the relatives of individuals who disappeared prior to 10 December 1983; (ii) Act No. 23,852 of 27 September 1990, which exempts from military service, upon request, anyone whose parent or sibling disappeared prior to 10 December 1983 in circumstances justifying a presumption of enforced disappearance; (iii) Decree No. 70/91, which authorizes payment of benefit to individuals who were detained by the Executive prior to 10 December 1983 and whose criminal indemnity action was denied owing to expiration of the statute of limitations; (iv) Act No. 24,043 of 27 November 1991, which authorizes payment of benefit to persons detained by the Executive prior to 10 December 1983 and to civilians who were arrested on the orders of the military courts, whether or not they were convicted by those courts; (v) Act No. 24,321 of 11 May 1994, which authorizes a declaration of absence due to enforced disappearance in the case of anyone who disappeared involuntarily from his home or place of residence prior to 10 December 1983 and has not been heard of since.

Article 15

92. The courts' jurisprudence confirms the broad and full applicability of the principle recognized in this article. Thus, the Supreme Court has decided that: "compliance by judges with the directive contained in article 18 of the Constitution may not be limited to ordering the prosecution and punishment of

those responsible for ill-treatment, since to give weight to the result of an offence and to base a judicial decision on it is not only at odds with the condemnation of the offence but compromises the proper administration of justice by attempting to establish it as a beneficiary of the illegal act".

Article 16

93. All the information supplied in connection with the offence of torture provided for in article 144 ter of the Argentine Penal Code applies to cases in which the treatment in question does not constitute torture under article 1 of the Convention. Without prejudice to this fact, the offence of ill-treatment is specifically mentioned in articles 144 bis, paragraphs 2 and 3, of the Code.

94. The information on judicial remedies provided in the section of this report relating to article 13 includes cases involving enforced disappearance and police violence, even though these offences do not constitute torture within the meaning of article 1. The Argentine State considers it necessary to include them in order to show cases in which the State has been held responsible for the conduct of public officials, even beyond the bounds of the functions of the official in question and pursuant to the principle of ultra vires responsibility.

ANNEX I

Information provided by the National Court of Appeal for Federal Criminal and Correctional Cases

Year	Proceedings initiated	Agencies accused	Documented injuries	Decision taken after pre-trial proceedings
1992 (1st half)	35	F.P.: 33 F.P.S.: 2	17	Stay 32 Filed 3
1992 (2nd half)	21	F.P.: 20 F.P.S.: 1	9	Stay 18 Filed 2 Lack of jur. 1
1993 (1st half)	10	F.P.: 7 F.P.S.: 3	7	Stay 2 Filed 8
1993 (2nd half)	7	F.P.: 7	7	Filed 5 Pending 2
1994 (1st half)	0			
1994 (2nd half)	4	F.P.: 2 F.P.S.: 2	4	Filed 3 Change char. 1
1995 (1st half)	1	F.P.	none documented	Pending
1995 (2nd half)	3	F.P.	2	Filed 2 Dismissal 1

Notes:

(1st half): first six months of calendar year

(2nd half): second six months of calendar year

F.P.: Argentine Federal Police

F.P.S.: Federal Prison Service

Dismissal: case dismissed

Stay: stay of proceedings

Change char.: referred to Correctional Court because of change of characterization

Lack of jur.: lack of jurisdiction

ANNEX II

Province of Chaco: complaints of ill-treatment

Ill-treatment: cases reported

Region	June-Dec. 1992	1993	1994	1995	Jan.-Mar. 1996
	Cases	Cases	Cases	Cases	Cases
First	12	18	9	3	1
Second	1	1	0	2	0
Third	0	0	2	1	0
Fourth	0	0	2	1	1
Fifth	0	0	0	0	0
Sixth	0	3	0	1	0
Total	13	22	13	8	2